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April 22, 1999

EX PARTE

Magalie R. Salas, Secretary
Federal Communications Commission
The Portals Building
445 12th Street, SW
TW-A325
Washington, D.C. 20554

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APR 22 1999

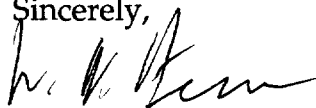
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CS Docket No. 95-184

Dear Ms. Salas:

A copy of the attached letter was sent to Deborah Lathen, Chief of the Cable Services Bureau, and Nancy Stevenson of the Cable Services Bureau as an example of franchised cable operator conduct in "mandatory access" states.

Sincerely,



W. Kenneth Ferree
Attorney for Choice Media Group

cc: Deborah Lathen
Nancy Stevenson

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April 22, 1999

BY MAIL

Kathryn Koles
Division Counsel
TCI Atlantic
67 B Mountain Blvd.
P.O. Box 4247
Warren, New Jersey 07059

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APR 22 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Koles:

Regarding your letter of the 16th (attached), I was disappointed to see that TCI has chosen to respond to the competitive entry into the video distribution market by my client, Choice Media Group ("Choice Media"), with baseless arguments and efforts to intimidate the owners and managers of the multiple dwelling unit ("MDU") properties that have decided to open their properties to competition.

As you should know, the FCC has established a procedure for the disposition of cable television "home run wiring" (the wiring dedicated to individual subscribers' premises) in MDUs. This procedure applies even when the incumbent operator owns the home run wiring in the MDU. Thus, whether or not you are correct about TCI's ownership of the wiring on the two properties referenced in your letter, the transition of the wiring in these buildings to accommodate competitive entry is governed by the FCC's rules.

Further, the FCC's procedures apply in "mandatory access" states such as Pennsylvania. Although an MDU owner may not prevent a franchised cable operator from providing service to any resident that chooses the cable operator's service in a mandatory access state, the FCC presumes that incumbents do not have a right to maintain a home run wire to any unit where the resident has not chosen the cable operator's service. This presumption may be overcome only if the franchised operator is able to obtain a binding order to the contrary from a state court within forty-five (45) days from the date of the notice invoking the FCC's transition procedures, or there has been an order from the state's highest

court that a state access law precludes use of the FCC's home run wiring disposition procedures. I am not aware of any such order applicable to the MDUs that you have referenced, and you cite none in your letter.¹

In both of the instances referenced in your letter, TCI has received notice from the MDU owner/manager invoking the FCC's pro-competitive inside wiring transition procedures. Accordingly, even assuming that TCI owns the home run wiring on the properties, as you assert, TCI was obligated to make an election within thirty days to remove, abandon, or sell the home run wiring for each unit that elects to take service from Choice Media.

Finally, with respect to the "home wiring" in each unit, TCI was required to indicate whether it owns the home wiring and, if it does, whether it intends to remove the home wiring upon service termination. TCI also, however, must notify the subscribers who elect Choice Media service that TCI will sell the home wiring to the subscribers at a price equal to the per-foot replacement cost of the wiring. Should any of the subscribers decline to purchase the home wiring in their units, the MDU owner or its agent may purchase the home wiring. Choice Media intends to do so.

Absent a state court order holding that the federal procedures do not apply in Pennsylvania, Choice Media intends to comply with and proceed under the FCC's inside wiring rules. If you have any questions or would like to discuss procedures for the unit-by-unit disposition, please contact Ray Roundtree at Choice Media.

Sincerely,



W. Kenneth Ferree
Attorney for Choice Media Group

cc: Ray Roundtree, Choice Media Group
Teddy Jones, Office of Chairman Billy Tauzin
Amy Abramowitz, GAO
Deborah Lathen, Chief, FCC Cable Services Bureau
Nancy Stevenson, FCC Cable Services Bureau

¹ Indeed, the Pennsylvania code section that you have cited suggests that MVPDs do not have a right to maintain a home run wire in an MDU contrary to the wishes of the MDU owner where the resident has not chosen the operator's service. See 68 P.S. § 250.503 (landlord may not prevent wiring of CATV facilities "if a tenant of a multiple dwelling premises has request such CATV services," suggesting that the landlord may prevent such wiring if the tenant does not request such services).



Now there's a better way.™

Kathryn Schatz Koles
Division Counsel

April 16, 1999

VIA CERTIFIED MAIL
RETURN-RECEIPT REQUESTED

Mr. Raymond Rountree
Choice Media
2100 Wharton Street, #301
Pittsburgh, PA 15203

Re: Cable Service by TCI of Pennsylvania, Inc.

Dear Mr. Rountree:

Thank you for participating in the recent conference call with Jeff Harshman of TCI Pennsylvania, Inc. ("TCI-Pa") and me in order to review the situation in the Pittsburgh area with respect to the provision of cable television services to multiple dwelling units ("MDUs"), including condominiums and apartment complexes by TCI-Pa. This letter is to set forth TCI-Pa's concerns and claims of both ownership of cable wiring and ability to continue serving certain MDUs in the area.

The Imperial House Condominium. One particular property is called the Imperial House Condominium. TCI-Pa received a letter from the Imperial House, dated January 19, 1999. TCI-Pa assumed from the sixty (60) day notice provision within the letter that it attempted to invoke the Federal Communications Commission's ("FCC") Rules for the unit-by-unit disposition of cable in-home wiring rules, set forth in MM Docket 92-260; FCC 97-376 (effective as of March 1998). In a letter, dated February 18, 1999, counsel for TCI-Pa notified the property manager that the FCC in-home wiring Rules does **not** govern the situation at **that** MDU. The FCC in-home wiring Rules do not apply because the **Pennsylvania statutes provide** TCI-Pa. The right to remain on the premises of the MDU over the owner's objection. Furthermore, that letter notified the property manager that TCI-Pa intends to continue to provide cable service to any of the residents of the Condominium who so desire to receive its services, pursuant to that Pennsylvania Statutes, Section 250.503-B.

Additionally, TCI-Pa made certain that the property manager was well aware that it claims full and exclusive ownership rights to all of the facilities and equipment, including the internal wiring, that enables the residents to receive cable service. TCI-Pa's predecessor-in-interest, Warner Cable Corp. of Pittsburgh, and the Condominium Association entered into an Easement and Entry Agreement in March 8, 1982, in which, among other things, declared that:

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Mr. Raymond Rountree
April 16, 1999

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"The Cable Facilities and every part thereof or appurtenant thereto shall be owned and continue to be owned by the Operator as its sole and exclusive property." Section 4 of that Agreement. See Brandt v. Koppelman, 169 Pa.Super 236, 82 A.2d 666, 667 (1951) ("parties ... may in their dealings with chattels annexed to ... real estate fix on them whatever character, as realty or personality, on which they may agree ... and the law will enforce such understanding).


The Maiden Bridge and Canongate Apartments. TCI-PA received a letter from the manager of these two MDUs on January 14, 1999. TCI-Pa's counsel notified the manager that while it could not locate an agreement for the provision of cable service to either of the Apartments. However, as we are certain that you are aware, TCI-Pa has been providing service to tenants at both of these apartments for many years. TCI-Pa wants to be certain that you are aware that it claims full and exclusive ownership rights to all of the facilities and equipment, including the internal wiring, that enables the residents to receive cable services. As TCI-Pa, and/or its predecessor-in-interest was the annexor of the cable-related facilities, equipment and internal wiring. Consequently, under Pennsylvania law, TCI-Pa remains the owner of that material and it does not become a fixture to the real property. *See, e.g., Noll v. Harrisburg Area YMCA*, 537 Pa.274, 643 A.2d 81 (1994) ("the intent of the parties is an important consideration in determining whether an object is a fixture.").

TCI-Pa has assured each of the property managers that any effort to displace it as a proper provider of cable service at those MDUs will be dealt with promptly and seriously.

Finally, TCI-Pa recognizes that Choice Media will be a competitor for the provision of multi-channel video programming services in the Pittsburgh market. In order to avoid future disputes concerning ownership of wires, ability to serve a particular MDU or the applicability of the FCC home run wiring rules to an MDU, or to further discuss the above-two mentioned MDUs, TCI-Pa is willing to meet with you, any other representatives of Choice Media and its counsel in an effort to resolve the provision of service at the two MDUs and to reach an agreement for resolving future disputes over the provision of service to MDUs.

If you have any questions concerning the provision of cable service by TCI-PA to the above-two MDUs and/or are interested in meeting to discuss procedures for the amicable resolution of service to other MDUs, please call me to schedule such a meeting.

Sincerely,



Kathryn Koles

cc: Philip J. Kantor, Esq.
David Fawcett, Esq.
Jeffrey C. Harshman

KK/am
APR 29/10.11